

Message Text

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SUBJ: EXCESS CURRENCY USAGE FOR INTERNATIONAL TRAVEL:
POLICY CLARIFICATION

REF: A) NEW DELHI 9626; B) STATE 164737;

-- C) NEW DELHI 9342; D) NEW DELHI 8045;

-- E) STATE 141410; F) NEW DELHI 7698;

-- G) STATE 135630; H) NEW DELHI 7419;

-- I) NEW DELHI 17034 (12/23/74). J) STATE 172327

1. USG RIGHT TO PURCHASE TRAVEL WITH EXCESS CURRENCIES:

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A. THE GOVERNMENTS OF ALL EXCESS AND NEAR-EXCESS
CURRENCY COUNTRIES INCLUDING THE GOI HAVE GIVEN THE USG A
RIGHT BY AGREEMENT TO USE U.S.-OWNED LOCAL CURRENCY TO
PAY FOR OFFICIAL USG INTERNATIONAL TRAVEL TO, THROUGH OR

FROM THE COUNTRY (DEFINED AS ANY TRAVEL PAID FOR WITH USG FUNDS, AS EVIDENCED BY A GTR), AND ON CARRIERS OF USG CHOICE. THIS RIGHT IS GRANTED BY THE INTERNATIONAL TRAVEL PROVISIONS OF P.L. 480 SALES AGREEMENTS ACCEPTING PAYMENT FOR AGRICULTURAL COMMODITIES IN LOCAL CURRENCIES. THE PROVISIONS DO NOT CONDITION USG EXERCISE OF THIS RIGHT BY ANY REQUIREMENT FOR FOREIGN GOVERNMENT APPROVAL OF INDIVIDUAL USES.

B. INASMUCH AS ACCEPTANCE OF ANY BASICALLY INCONVERTIBLE CURRENCY SUCH AS THE INDIAN RUPEE FOR THE PURCHASE OF INTERNATIONAL TRAVEL ON CARRIERS FOREIGN TO THE COUNTRY ISSUING THE CURRENCY IS DEPENDENT ON THE CONVERTIBILITY OF THE CURRENCY WHEN USED FOR TRAVEL, THE RIGHT BY AGREEMENT GRANTED BY FOREIGN GOVERNMENTS TO THE USG CLEARLY IMPLIES THAT THE FOREIGN GOVERNMENTS WILL REDEEM THEIR CURRENCY WHEN SO USED BY THE USG FROM RECIPIENT CARRIERS WITH CONVERTIBLE FOREIGN EXCHANGE. NO FOREIGN GOVERNMENT (INCLUDING THE GOI) HAS REPUDIATED THIS IMPLIED OBLIGATION.

C. ALTHOUGH P.L. 480 SALES AGREEMENTS WITH THE GOI WERE SUPERSEDED BY THE FEBRUARY 18, 1974 MOYNIHAN AGREEMENT, THE LATTER AGREEMENT PROVIDES FOR THE CONTINUATION WITH RETAINED NON-P.L. 480 CURRENCY OF ALL USG USES OF RUPEES MADE IN THE THREE YEARS PRECEDING JUNE 30, 1972. PRIOR TO THE CONCLUSION OF THE MOYNIHAN AGREEMENT AND AT THE SPECIFIC REQUEST OF THE DEPARTMENT, THE EMBASSY SECURED ASSURANCES FROM THE GOI THAT THIS PROVISION CONTINUED, WITH NON-P.L. 480 CURRENCY, THE TRAVEL USES (AND CONDITIONS OF PERFORMANCE), REVIOUSLY OBTAINING UNDER THE INTERNATIONAL TRAVEL PROVISIONS OF P.L. 480 SALES AGREEMENTS.

D. IT HAS BEEN CLEARLY UNDERSTOOD BY ALL CONCERNED SINCE THE INCEPTION OF USG RIGHTS TO USE INCONVERTIBLE LOCAL LIMITED OFFICIAL USE
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CURRENCIES FOR PURCHASE OF INTERNATIONAL TRAVEL THAT EXERCISE OF THESE RIGHTS WOULD RESULT IN A CONVERTIBLE FOREIGN EXCHANGE DRAIN ON THE FOREIGN GOVERNMENTS ISSUING THE CURRENCIES. THE USG POSITION OVERALL HAS BEEN THAT THIS CONSTITUTED A RELATIVELY MINOR RETROACTIVE PAYMENT IN CONVERTIBLE EXCHANGE FOR (1) COMMODITIES PROVIDED TO THE FOREIGN GOVERNMENTS AT CONCESSIONAL RATES WITH PAYMENT BASICALLY IN INCOVERTIBLE LOCAL CURRENCIES, AND (2) IN THE CASE OF INDIA NOW, DOLLAR LOANS BASICALLY REPAYABLE IN LOCAL CURRENCY.

E. IN THE PAST WHEN AN AMERICAN EMBASSY AGREED WITH A FOREIGN GOVERNMENT VIEW THAT A PROJECTED FOREIGN EXCHANGE

DRAIN FROM USG USE OF THE LOCAL CURRENCY FOR INTERNATIONAL TRAVEL AND TRANSPORTATION EXCEEDED THE FOREIGN EXCHANGE CAPACITY OF THE FOREIGN GOVERNMENT, THE TYPES OF TRAVEL PAYABLE IN THE CURRENCY HAVE BEEN RESTRICTED BY THE USG, WITH PRIORITY FOR RETENTION SOME WHAT AS FOLLOWS:

1. AIR TRAVEL ORIGINATING IN THE FOREIGN COUNTRY; 2. AIR TRAVEL TERMINATING IN FOREIGN COUNTRY; 3. AIR TRAVEL TRANSITING COUNTRY WITH OFFICIAL STOPOVER; 4. AIR FREIGHT

SHIPMENTS ORIGINATING IN COUNTRY; 5. AIR FREIGHT SHIPMENTS TERMINATING IN COUNTRY; 6. AIR TRAVEL TRANSITING COUNTRY WITHOUT OFFICIAL STOPOVER; 7. AIR FREIGHT TRANSITING COUNTRY; 8. SURFACE TRAVEL ORIGINATING IN COUNTRY; 9. SURFACE TRAVEL TERMINATING IN COUNTRY; 10. SURFACE TRAVEL TRANSITING COUNTRY; 11. SURFACE FREIGHT ORIGINATING IN COUNTRY; 12. SURFACE FREIGHT TERMINATING IN COUNTRY; AND 13. SURFACE FREIGHT TRANSITING COUNTRY.

2. USG POLICY AND REGULATION RE USE AMERICAN AIR CARRIERS: FOR MANY YEARS IT HAS BEEN EXECUTIVE BRANCH POLICY THAT OFFICIAL USG INTERNATIONAL AIR TRAVEL BE PERFORMED ON AMERICAN CARRIERS WHENEVER FEASIBLE. FOR MORE THAN A DECADE FEDERAL AND FOREIGN SERVICE TRAVEL REGULATIONS HAVE REQUIRED THE USE OF AMERICAN CARRIERS BY USG EMPLOYEES IN PREFERENCE TO FOREIGN CARRIERS, SPECIFIED THE EXCEPTIONS PERMITTING USE OF FOREIGN CARRIERS, AND REQUIRED JUSTIFICATION FOR USE OF FOREIGN CARRIERS TO BE ENTERED ON OR ATTACHED TO THE TRAVEL ORDER OR OTHER AUTHORIZING DOCUMENT
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OR TRAVEL VOUCHER. CURRENT CITATIONS ARE: 6 FAM 134 AND 6 FAM 190 FTR APP. A (P. 16).

3. U.S. LAW RE USE AMERICAN CARRIERS: AS INDICATED IN REF. B, P.L. 93-623 EFFECTIVELY REQUIRES ALL USG AGENCIES TO TAKE SUCH STEPS AS MAY BE NECESSARY TO INSURE THAT ALL AIR TRAVEL FINANCED WITH USG-CONTROLLED FUNDS TAKE PLACE ON AMERICAN FLAG CARRIERS TO THE EXTENT THAT SERVICE BY SUCH CARRIERS IS AVAILABLE. THIS LAW BECAME EFFECTIVE JANUARY 3, 1975. IT ALSO REQUIRED THE COMPTROLLER GENERAL OF THE UNITED STATES TO DISALLOW ANY EXPENDITURE FROM APPROPRIATED FUNDS FOR PAYMENT OF TRANSPORTATION ON FOREIGN CARRIERS IN THE ABSENCE OF SATISFACTORY PROOF OF THE NECESSITY THEREFORE. ON JUNE 17, THE COMPTROLLER GENERAL ISSUED GUIDELINES FOR THE MODIFICATION OF TRAVEL REGULATIONS TO IMPLEMENT THE NEW LAW WHICH STIPULATE, WITH MINOR EXCEPTIONS RELATED TO EXCESSIVE DELAYS, THAT (1) AMERICAN FLAG CARRIERS MUST BE USED FOR ALL GOVERNMENT-FINANCED COMMERCIAL FOREIGN AIR TRANSPORTATION OF PERSONS OR PROPERTY IF SERVICE PROVIDED BY THESE CARRIERS IS AVAILABLE, AND (2) ANY EXPENDITURES FOR

COMMERCIAL FOREIGN AIR TRANSPORTATION ON FOREIGN CARRIERS WILL BE DISALLOWED UNLESS THERE IS ATTACHED TO THE APPROPRIATE VOUCHER A CERTIFICATE OR MEMORANDUM EXPLAINING ADEQUATELY WHY AMERICAN FLAG SERVICE IS UNAVAILABLE. AS REFLECTED IN REF. J, REVISIONS OF TRAVEL REGULATIONS ARE NOW IN PREPARATION FOR ISSUANCE.

4. IN VIEW OF PARA. 3 IN ABOVE BACKGROUND PRESENTATION, STATEMENT CONTAINED IN REF. C THAT "IT WAS USG POLICY THAT MAXIMUM POSSIBLE USE BE MADE OF AMERICAN CARRIERS" NOT STRONG ENOUGH. IT IS NOT ONLY USG POLICY BUT ALSO U.S. LAW THAT REQUIRES USG-FINANCED TRAVELLERS UTILIZE AMERICAN CARRIERS WHEN SERVICE BY SUCH CARRIERS IS AVAILABLE, EXCEPT WHERE ADEQUATE PROOF OF THE NECESSITY OF USING A NON-AMERICAN CARRIER IS PROVIDED. GAO-APPROVED "NECESSITY" EXCEPTIONS EXTREMELY LIMITED AND DO NOT INCLUDE LOCAL CURRENCY-FINANCED TRAVEL WHERE THE LOCAL CURRENCY IS ACCEPTABLE TO AMERICAN CARRIERS. THEREFORE, EMBASSY CANNOT ENTER INTO AGREEMENT WITH GOI WHICH WOULD ALLOW USG-FINANCED TRAVEL ON ROUTES SERVED BY AN LIMITED OFFICIAL USE
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AMERICAN CARRIER TO TAKE PLACE ON AIR INDIA. WE HAVE NO FLEXIBILITY ON THIS QUESTION, AND BOTH LANDE AND GAASERUD HAVE TOLD GOI THIS IN THE PAST (SEE REFTTEL E). WE RECOGNIZE THAT OUR POSITION MAY HAVE ADVERSE IMPACT ON LIMITED NUMBER OF EXCHANGE PROGRAMS, BUT EMBASSY SHOULD NOT, REPEAT NOT, ATTEMPT TO WORK OUT "SHARED TRAVEL" ARRANGEMENT ALONG LINES CONTAINED REF. C. WHILE PAN AM'S PREFERENCE THIS MATTER HAS NO LEGAL RELEVANCE AS YOU SUGGEST, INFORMAL CONSULTATIONS HERE REVEAL THEIR AGREEMENT THAT WE HAVE NO ALTERNATIVE TO COMPLIANCE WITH THE STRICT "FLY AMERICAN" POLICY REQUIRED BY LAW.

5. GOI DISAPPROVAL OF SCIENCE PROJECTS ON THE BASIS OF TRAVEL COSTS DEEMED EXCESSIVE BY GOI HAS NEVER BEEN AND IS NOT NOW ACCEPTABLE TO USG. SUCH DISAPPROVALS REPRESENT INFRINGEMENT OF THE USG'S RIGHTS BY AGREEMENT TO USE RUPEES IN PAYMENT OFFICIAL TRAVEL AS SET FORTH IN PARA. 1 ABOVE. WHILE WE MAY HAVE DIFFICULTY IN EXERCISING THESE RIGHTS, WE CAN NEVER ACCEDE TO THEIR INFRINGEMENT WITHOUT CREATING A PRECEDENT FOR SIMILAR INFRINGEMENTS BY THE GOVERNMENTS OF OTHER EXCESS AND NEAR-EXCESS CURRENCY COUNTRIES. WE DO NOT INTEND TO CREATE SUCH A PRECEDENT.

6. GOI CONDITIONAL APPROVAL OF TRAVEL FOR SCIENTIFIC PURPOSES WITH STIPULATION THAT THE TRAVEL BE PERFORMED ON AIR INDIA WHERE THE CARRIER OPERATES IS ALSO UNACCEPTABLE TO THE USG FOR THE SAME REASONS SET FORTH IN PARA. 5 ABOVE. IN THE USE OF USG RUPEE RESOURCES FOR TRAVEL, THE USG MUST BE FREE TO CHOOSE CARRIERS OF ITS CHOICE AS

ORIGINALLY AGREED TO BY THE GOI (SEE PARA. 1A). IN ADDITION, THE NEW LEGISLATION DENIES ANY OPTION OF USING FOREIGN CARRIERS IF AMERICAN CARRIER SERVICE IS AVAILABLE. NO WAIVER IS POSSIBLE FOR EITHER AMERICANS OR INDIANS.

7. U.S. SCIENTIFIC AGENCIES HAVE BEEN APPRISED OF THE

CONCERNS EXPRESSED IN REF. I ON RUPEE-FUNDED TRAVEL, BASED ON FURTHER DISCUSSIONS HERE DURING SCIATTS VISIT. ULTIMATE DETERMINATION OF IMPORTANCE OF SPECIFIC TRAVEL OF COURSE RESTS WITH INDIVIDUAL AGENCIES. DEPARTMENT IS NOT IN POSITION TO JUDGE COMPARATIVE SCIENTIFIC VALUES OF LIMITED OFFICIAL USE
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TRAVEL AS BETWEEN AGENCIES OR AT WIDELY DISPARATE POINTS IN TIME. IT CAN QUESTION AND ADVISE BUT DOES NOT HAVE AUTHORITY TO DENY CONCURRENCE ON SCIENTIFIC PRIORITY GROUNDS. WE HAVE SUGGESTED TO THEM PRIORITY AS GUIDANCE WOULD BE JOINT COMMISSION-RELATED, PROJECT-RELATED, PROGRAM DEVELOPMENT, AND CONFERENCE TRAVEL IN THAT GENERAL ORDER. HOWEVER, OTHER FACTORS ENTER INTO CONSIDERATION, SUCH AS NSF MANDATE TO FOSTER INTERCHANGE OR SCIENTIFIC INFORMATION, CONFERENCE TRAVEL BEING AN IMPORTANT ELEMENT.

8..WITH REGARD TO FORMER TREASURY ATTACHE WATSON'S 1964 LETTER TO THE FINANCE MINISTRY SAYING "THE UNITED STATES WILL ENDEAVOR TO MAKE AS MUCH USE AS PRACTICABLE OF THE REGULAR AND CHARTER FLIGHT FACILITIES OFFERED BY AIR INDIA.", THE NEW U.S. LAW MAKES IT IMPRACTICABLE TO PLACE USG-FINANCED TRAVEL ON AIR INDIA OVER ANY ROUTES WHICH AMERICAN CARRIER'S SERVE. LIKEWISE, NO PREVIOUS EXAMPLES OF THE USE OF AIR INDIA FOR USG-FINANCED TRAVEL CAN BE CONSIDERED AS VALID PRECEDENTS.

9. FYI: WHILE THE USG CANNOT ENTER INTO AN ARRANGEMENT TO SHARE U.S.-FINANCED TRAVEL WITH AIR INDIA, CANNOT ACCEPT GOI EXERCISE OF A VETO ON INDIVIDUAL USG USES OF RUPEES FOR TRAVEL, AND CANNOT ACCEPT GOI STIPULATIONS THAT SPECIFIC TRAVEL BE PERFORMED IN WHOLE OR IN PART ON AIR INDIA, THE DEPARTMENT IS AWARE THAT RUPEES PAID TO CARRIERS FOREIGN TO INDIA MUST BE REDEEMABLE BY THE GOI WITH CONVERTIBLE EXCHANGE (SEE PARA. 1B). THE CAPACITY OF THE GOI TO EFFECT SUCH REDEMPTIONS IS DEPENDENT ON THE ADEQUACY OF THEIR FOREIGN EXCHANGE EARNINGS AND HOLDINGS IN RELATION TO ESSENTIAL REQUIREMENTS. SHOULD THE GOI TAKE THE POSITION THAT INCREASING USG USE OF RUPEES FOR INTERNATIONAL TRAVEL ABOVE PREVIOUS LEVELS OR DECLINE IN CONVERTIBLE FOREIGN EXCHANGE AVAILABILITIES OF THE GOI MAKE IMPOSSIBLE REDEMPTION OF THE CURRENT LEVELS OF USG USAGE OF INDIAN RUPEES, AND IF EMBASSY ANALYSIS CONFIRMS THIS POSITION, THE DEPARTMENT WILL EXPLORE ALL POSSIBLE

MEANS OF REDUCING THE USAGE TO FEASIBLE LEVELS, INCLUDING THE METHOD DISCUSSED IN PARA. 1E. WE HOPE THAT SUCH REDUCTION WILL NOT BECOME NECESSARY. IT WOULD BE PURSUED AS A LAST RESORT TO INSURE CONTINUATION OF TRAVEL
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